STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 14, 1997

VIA FEDERAL EXPRESS

Office of the Secretary
Federal Communications Commission
1919 M St., N.W. Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-115

Gentlemen:

Please find enclosed for filing an original plus four copies of the FURTHER COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA TO SPECIFIC QUESTIONS ON THE PUBLIC NOTICE PURSUANT TO THE NOTICE OF PROPOSED RULEMAKING in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed postage pre-paid envelope.

Yours truly,

Mary Mack Adu

Mary Mack Adu
Attorney for California

MMA:cdl

Enclosures

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ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of the Telecommunications Act of 1996 Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information.	)))))	CC 96-115

FURTHER COMMENTS BY THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA TO SPECIFIC QUESTIONS ON THE PUBLIC NOTICE PURSUANT TO THE NOTICE OF PROPOSED RULEMAKING

I. INTRODUCTION

The People of the State of California and the California Public Utilities Commission ("CPUC") file these comments in response to the Federal Communications Commission's ("FCC") Public Notice DA 97-385 in the Customer Proprietary Network Information (CPNI) rulemaking in CC DOCKET No. 96-115. Customer privacy and CPNI are very important issues to both the People of the State of California and the CPUC. We welcome this opportunity to provide additional comments on how Bell Operating Companies' (BOCs) affiliates may have access to CPNI and how joint marketing is effectuated consistent with restrictions placed on the release of CPNI contained in section 222 and section 272 of the Telecommunications Act of 1996 (1996 Act).

In the Public Notice, the Common Carrier Bureau of the FCC seeks further comment on the interplay between sections 222 and 272 of the 1996 Act. The questions contained in the public notice address many issues, four of which the CPUC wishes to respond to:

1. How does the requirement that BOC affiliates and unaffiliated entities must all be treated in a non-discriminatory manner, consistent with section 272(c), affect an affiliate's access to CPNI collected and maintained by its parent company, the BOC, or collected on behalf of the affiliate? (*See* Questions 1, 2, and 4.)

2. When a BOC joint markets with its affiliate and CPNI is not released to the affiliate, what are the relevant CPNI rules that must be followed? (*See* Question 1 and 4.)

3. Must a customer solicitation process be offered to non-affiliates? (*See* Questions 6 and 8.)

4. Should customer solicitations on behalf of section 272 affiliates be considered "transactions" under section 272(b)(5)? (*See* Question 10.)

At the outset, the CPUC asserts that BOCs and other carriers are not relieved of any the requirements of section 222 by section 272 of the 1996 Act. All carriers must receive appropriate approval from end-user customers prior to using or releasing CPNI consistent with the 1996 Act and the Computer III Remand Proceedings, CC Docket 90-623. The CPUC urges the FCC to affirm that

BOC affiliates must meet the same CPNI restrictions as other parties and that a transaction between a BOC and its affiliate must protect CPNI in the same manner as a transaction between a BOC and an independent carrier.

However, the CPUC realizes that section 272(g) of the 1996 Act does allow BOCs to joint market with affiliates using CPNI collected by the BOC. Further, section 272(g) allows the BOC to joint market with an affiliate and not provide the same opportunities to unaffiliated entities. Specifically, a BOC may joint market its own local service and interexchange services of an affiliate using CPNI the BOC has obtained without offering the same opportunity to unaffiliated entities. This special exemption addresses the treatment of affiliate versus unaffiliated entities, but does not modify either explicitly or implicitly section 222 requirements.

Currently, the Computer III Remand allows the type of approval needed and the process for obtaining that approval to vary by customer class (business vs. residential) and size of customer (single vs. multi-line). In the CPUC's comments to the FCC's CPNI NPRM CC Docket No. 96-115 ("NPRM"), we asserted that section 222 (c) (1) requires customer authorization without regard to customer class and size. In the CPUC's opinion, customers should be notified by bill inserts of their rights to protect their CPNI and written authorization to use CPNI should be required for residential customers. If the FCC determines that oral authorization is more appropriate, subsequent to an oral authorization, a carrier

must verify with an independent third party, and customers who choose not to exercise their right should be sent a follow up letter.

II. BOC AFFILIATE ACCESS TO CPNI AND SECTION 272

In Public Notice questions 1, 2, and 4, the FCC seeks parties' comments about the conditions under which CPNI can be disclosed or released to a BOC affiliate, and whether those conditions must be the same for unaffiliated entities. Section 272(c)(1) requires a BOC to make CPNI available to unaffiliated entities on the same terms, conditions and rates as the BOC made the CPNI available to its affiliate. This condition applies whether the approval is obtained in writing or orally from customers. Under the Computer III Remand, for multi-line business customers who have more than 20 lines, a BOC must obtain written approval to disclose CPNI to intra-company operating units providing enhanced services and customer premise equipment. When soliciting customer approval to release CPNI, the BOC must also allow customers to make the same information available to unaffiliated entities.

At a minimum, section 272(c)(1) requires that BOCs meet an approval process similar to that adopted in Computer III Remand. Since BOCs must make information available on the same terms and conditions it offers to its affiliate, BOCs must be prepared to release information to both its affiliate and unaffiliated entities simultaneously. It is inconsistent with the goals of section 272 for a BOC to only solicit customer approval to use CPNI for its own affiliate and then inform

unaffiliated entities that it will perform the same solicitation, but at a date after the BOC affiliate receives the CPNI. The CPUC suggests that prior to a BOC soliciting customer approval to use CPNI for its affiliate, the BOC should inform unaffiliated entities of the opportunity to have the BOC solicit for them during the same solicitation cycle. The BOC should not distinguish its affiliate as an affiliate during the solicitation to ensure that BOC affiliates do not receive undue advantage in obtaining customer approval. This customer approval process will allow BOCs to release information to both its own affiliate and unaffiliated entities simultaneously.

III. JOINT MARKETING WITHOUT CPNI DISCLOSURE

In Public Notice questions 6, 7, and 8, the FCC seeks parties' comments on any CPNI requirements sections 222(c)(1) and 222(c)(2) impose on a BOC's joint marketing efforts with an affiliate. The FCC seeks comments on whether the BOCs must offer to unaffiliated entities a customer approval process for release of CPNI. Section 222(c)(1) requires carriers to obtain customer approval prior to releasing CPNI, however, a joint marketing campaign in which BOC marketing representatives conduct the customer contact/solicitation does not in and of itself constitute a release of CPNI to a BOC affiliate, and therefore would not violate section 222(c)(1). Under the scenario where BOC representatives use CPNI for marketing and do not reveal it to BOC affiliates, Section 272(g)(3) waives the requirement that the BOC make the service available to other carriers at the same

terms, conditions and rates. Thus, a BOC may use CPNI in marketing its own service and an affiliate's service, and not offer the same service on the same terms and conditions to other carriers. This would not be a violation of section 222.

The CPUC notes that this situation is different from the one discussed above where CPNI is released to the BOC affiliate. In that situation, either the BOC or the affiliate must obtain prior customer approval and if the BOC solicits the approval, the solicitation must also be made on behalf of unaffiliated entities on a non-discriminatory standard as required by section 272(c)(1).

IV. CUSTOMER SOLICITATION PROCESS

In Public Notice questions 6 and 8, the FCC seeks parties' comments on whether BOCs must offer customer solicitation as a service. While it is the CPUC's position that BOCs must solicit customer approval for release of CPNI on a nondiscriminatory basis that treats its affiliates the same as unaffiliated entities, the CPUC does not endorse the idea that BOCs must offer customer solicitation as a "service" in the sense of a section 251 unbundled network element. Similar to the nondiscriminatory standard adopted in the Computer III Remand, a BOC may meet its section 272(c)(1) obligation by offering to solicit for unaffiliated entities at the same time it solicits for its own affiliate. Any charges applied to non-affiliates must be the same as those that affiliates will be assessed. In its First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 ("272 Order"), the FCC concludes that BOCs must offer the same service to unaffiliated

entities, but the nondiscrimination standard of section 272(c)(1) does not require BOCs to provide different goods, services, facilities, and information than it provides to its section 272 affiliate. (Paragraphs 202-203 of section 272 Order). Thus a BOC may fulfill its nondiscrimination obligation by offering to solicit customer approval to release CPNI for both its affiliates and unaffiliated entities through the same solicitation process. The BOC does not have to offer to solicit customers through a different process for unaffiliated entities.

V. ARE CUSTOMER SOLICITATIONS A "TRANSACTION" UNDER SECTION 272(B)(5)

In Public Notice question 10, the FCC seeks parties' comments on whether customer solicitations performed by BOCs on an affiliate's behalf must be considered transactions and subject to section 272(b)(5). The CPUC asserts that when a BOC performs a solicitation for release of CPNI on the behalf of an affiliate, the solicitation qualifies as a "transaction" under section 272(b)(5) and therefore must be disclosed to unaffiliated entities. As the CPUC advocates above, BOCs must make the same customer solicitation process available to unaffiliated entities on the same terms, conditions, and rates as it does to its affiliate to be nondiscriminatory in the release of CPNI. As the CPUC suggested, a BOC could inform other interested unaffiliated entities of a future solicitation campaign it will be undertaking for its affiliate and afford the unaffiliated entities an opportunity to purchase the resultant CPNI of customers who have agreed to the release of their

information. This type of notice would likely meet the requirements of section 272(b)(5) that transactions be negotiated at arms length and be reduced to writing.

VI. ELECTRONIC PUBLISHING OF CPNI

At this time, the CPUC does not have specific answers to questions 13-26. Recently, the CPUC addressed related issues in our Local Competition Proceeding (R.95-04-043/I.95-04-044) by establishing rules governing third party access to directory and directory assistance databases of local exchange carriers. The rules do distinguish between data necessary for alternative directory assistance operators and data necessary for those entities creating published directories, either paper or electronic. The decision is attached as Appendix 1.

VII. CONCLUSION

The use, disclosure, and access to consumers' CPNI is important to California. We are hopeful that even as sections 272 and 274 are implemented, section 222's customer privacy provisions are not diminished. In seeking a balance between customer privacy and competition consistent with the 1996 Act, the FCC should recognize the important role that states play in striking that

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balance and resist issuing rules that restrict a state's right to protect customers' CPNI. We therefore ask for your consideration of these comments.

Respectfully submitted,

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Dated: March 14, 1997

APPENDIX 1

ALJ/TRP/gab **

Mailed

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Decision 97-01-042 January 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	R.95-04-043 (Filed April 26, 1995)
Order Instituting an Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	I.95-04-044 (Filed April 26, 1995)

I N D E X

O P I N I O N

I. Introduction

By this decision, we address the outstanding issues in our local competition rulemaking relating to subscriber directory listings and access to directory listing information. We adopted initial interim rules addressing these issues in our Phase II Decision (D.) 96-02-072. We directed that unresolved issues relating to directory listings be addressed in technical workshops in Phase III of this proceeding. On April 1-3, and April 16, 1996, such workshops were held. By Administrative Law Judge (ALJ) ruling dated May 21, 1996, parties were directed to file comments on remaining disputed issues which were not resolved by the workshops.

Phase III comments were filed on June 10, 1996, by Pacific Bell (Pacific), GTE California Incorporated (GTEC), the California Telecommunications Coalition (Coalition),[1] the Association of Directory Publishers (ADP), Metromail, Pacific Lightwave, Inc./GST Lightwave, Inc., and the Office of Ratepayer Advocates (ORA). The Coalition separately filed an application for rehearing of D.96-02-072 on March 29, 1996, in which some of the issues raised were also addressed in their Phase III comments. The Commission subsequently issued D.96-09-102 denying the application

1 The members of the the Coalition joining the comments were: AT&T Communications of California; California Cable Television Association; ICG Access Services, Inc.; MCI Telecommunications Corp.; Sprint Communications Company L.P.; Teleport Communications Group Inc.; and Time Warner AxS of California, L.P. The views expressed represent a consensus of the Coalition's members and do not necessarily reflect the views of each Coalition member. The motion for acceptance of the Coalition's late-filed comments is granted.

for rehearing. On October 23, 1996, ADP filed a Petition for Writ of Review of D.96-09-102 in the California State Supreme Court. This decision addresses the remaining Phase III issues which were not resolved by D.96-09-102.[2] ADP also filed supplemental comments on July 30, 1996. Pacific filed a supplemental reply to ADP on October 4, 1996.

The assigned ALJ prepared a draft decision on directory listing issues which was mailed to parties of record for comment on November 15, 1996. While there were no evidentiary hearings on this matter, and there was no statutory requirement to circulate the proposed ALJ decision for comments, the assigned Commissioner wished to afford the parties an opportunity for comment. We have considered the opening and reply comments on the proposed ALJ decision and made revisions in the proposed decision where appropriate. Among the most significant changes we have made from the previous draft decision is the requirement that Pacific and GTEC provide third-party vendors with access to the anonymous address only of nonpublished customers solely for directory delivery purposes. We have also revised the decision to require GTEC to provide third-party database vendors nondiscriminatory access to its directory assistance database.

2 On November 13, 1996, ADP filed a Petition for Modification of D.96-02-072, Conclusion of Law 29, which stated that the provision of subscriber listings by the local exchange carrier (LEC) is not an essential service. While this issue was decided in D.96-09-102, and challenged in ADP's Writ of Review Petition, legal counsel of the Commission has joined with ADP requesting that the Supreme Court delay reviewing the Petition for Writ of Review pending the disposition of ADP's November 13 Petition of Modification. Accordingly, in this decision, we make no final judgment on whether the provision of LEC subscriber listings is an essential service, pending disposition of ADP's November 13, Petition for Modification.

II. Positions of Parties

A. Introduction

In this decision, we focus on the remaining disputed issues over directory access and publishing which have not been resolved through D.96-02-072 or the workshops. These issues relate principally to LEC/competitive local carrier (CLC) access and use of each other's directory listings, terms and prices for CLCs' inclusion in the customer-guide pages of LEC directories, and independent directory vendors' access to LEC directory databases.

The outstanding disputes over access to LEC/CLC directories and related database directory listings involve the conflicting interests of the incumbent LECs, CLCs (represented principally by the Coalition), independent directory vendors (represented by ADP and Metromail), and consumer interest groups (represented by ORA and The Utility Reform Network). While we adopted interim rules in D.96-02-072 addressing telephone directory and database-access issues, the LECs and CLCs continue to disagree over their reciprocal rights and obligations for access and use of each other's subscriber-list information. Parties also disagree over the terms and compensation with respect to CLCs' inclusion in the information section preceding the "White Page" listings in the LEC directory. Further, our interim rules for access to directory-listing databases adopted in D.96-02-072 did not resolve database-access issues raised by third-party vendors of directory information. In this decision, in addition to resolving outstanding LEC/CLC disputes, we shall also address access to directory databases by such third-party vendors.

Metromail is a wholly owned subsidiary of R.R. Donnelly & Sons Company, the world's largest commercial printer. Metromail's on-line-services group provides directory-assistance services to telecommunications companies and consumers through its National Directory Assistance product. Metromail's primary interest in this

proceeding is the issue of third-party vendors' access to Directory Assistance (DA) listing information for use as an alternative DA service to the LECs.

ADP is a national nonprofit trade association composed of publishers of "independent" yellow page directories (i.e., other than those published by or for local telephone companies). ADP's interest in the proceeding is related primarily to the issue of third-party independent vendors' access to LEC and CLC directory-listing databases for purposes of publishing and delivering the vendors' own directories. ADP also disputes the rates being charged by Pacific for the rights to reproduce Pacific's directory listings.

In resolving the outstanding directory-listing access issues, disputes over access to DA databases can be distinguished from access to directory-listing databases used for publishing directories. While Pacific utilizes one unified data base both for DA and for publishing its subscriber directories, GTEC maintains two separate databases. One GTEC database contains listings used only for DA purposes. A second GTEC database contains listings used only for directory-publishing purposes. Each of the GTEC databases is separately accessed, maintained, and updated.

B. **LEC/CLC Reciprocal Access to Directory-Listing Databases**

In D.96-02-072, we required LECs to include CLCs' customers' telephone numbers in their "White Pages" and directory listings associated with the areas in which the CLC provides local exchange services, except for CLC customers wishing to be unlisted. (Rule 8.J.2) An unresolved issue, however, is what rights and obligations the LECs have concerning the use and dissemination of CLC customer listings which have been provided to them for inclusion in the LEC directory. A related issue is what reciprocal rights and obligations the CLCs have concerning access to LEC subscriber-listing information.

Parties expressed differing views concerning the terms and conditions under which the LECs and CLCs may gain access to each others' directory-listing information, and how such information may be used. The Coalition argues that CLCs should have the same access to all local-exchange-subscriber information, as LECs do at no charge, because the LECs do not charge themselves to maintain the database.

Alternatively, in lieu of equivalent access, the Coalition believes CLCs should be compensated for any use of their customer information beyond the agreed-upon listing arrangement, since the CLCs retain a property right in their subscriber information in the same manner as the LECs. To the extent that CLC information is packaged and sold to independent directory publishers, for example, the CLCs should be compensated in precisely the same manner as the LECs, according to the Coalition, since LECs and CLCs are engaged in the same business and have collected and used subscriber information in the same way. The Coalition contends, however, that the LECs refuse to provide CLCs access to existing databases at no charge and refuse to compensate the CLCs for use of CLC subscriber information by either the LEC or third parties.

The Coalition argues that LECs have no right to use CLC subscriber information beyond the limited listings agreement. The Coalition objects to Pacific's intent to make CLC-subscriber information available to third-party vendors such as Metromail for their use in the sale of databases. The Coalition argues that Pacific can not arrogate to itself the right to furnish this information absent CLC consent and compensation since Pacific neither owns nor is licensed to sell this information.

ORA recommends that the LECs be ordered to submit written proposals for CLC compensation for subscriber information with one round of comments to follow prior to issuance of a decision.

If a CLC requests that its subscriber-listing information not be provided to independent publishers, Pacific states that it will honor the request. Because it is the CLCs' choice of whether Pacific releases their information, Pacific does not intend to compensate the CLC for revenue obtained as a result of its provision of CLC subscribers' information to an independent publisher. The CLC is free to directly provide this information to independent publishers for compensation according to Pacific.

GTEC proposes to use CLC subscriber information only for the purposes of directory publication, and not to sell CLC-subscriber information to another party without CLC authorization. If a CLC so desires, GTEC would enter into an agreement to act as a service bureau for the provisioning of the CLC information.

GTEC currently provides its own published directory as a Category II tariffed service. Subscriber-list information was recently recategorized from Category I to II by the Commission in D.96-03-020, and the procedures for determining the prices for such Category II services are being addressed in the Open Access and Network Architecture Development (OANAD) docket. GTEC believes the current procedures provide more than a sufficient opportunity for the Commission staff and other interested parties to review the reasonableness of such rates.

C. **Third-Party Directory Database Administrator**

The Coalition believes that the LEC directory-listing database must be transitioned to an independent administrator, not unlike the transition taking place in the context of NXX Code administration. To that end, the Coalition requests that the presiding ALJ have the Telecommunications Division convene a workshop to discuss this process. The LECs and ORA disagree and argue that no need for a database administrator has been shown. Pacific states that no record has been developed for ordering the transfer of directory listings to a neutral third party. Pacific notes that the creation and maintenance of a neutral listing

database would be a complex commercial venture, essentially transforming a private segment of industry into a quasi-governmental enterprise. Pacific contends that evidentiary hearings would be necessary before the database administrator issue is decided since, as the Commission has previously found, "complex technical issues...cannot be resolved absent evidentiary hearings."[3]

D. CLC Informational Listings in LEC Directories

1. Content and Space Allotments for CLC Information Listings

In our adopted rule in D.96-02-072, we required that LECs include information in its directory about each CLC on the same basis that the LECs include information about themselves or their affiliates. We did not, however, prescribe exactly what information about the CLC should be included in such informational listings nor did we prescribe how many pages should be allotted each CLC for this purpose. In Phase III comments, the CLCs and LECs expressed conflicting views on these issues.

Because CLCs and LECs are on an equal footing as certified local exchange providers, the Coalition argues that the unified directory mandated by the Commission must provide the CLCs equal access to that directory for basic information concerning services offered, customer-contact numbers, and other information such as that provided by the LECs to their customers in the directories. The Coalition states CLCs are not asking to replicate all of the information contained in the beginning of each LEC directory, nor provide promotional material. Rather, it is space for specific CLC information regarding establishment and provision of service that is sought.

3 Re Alternative Regulatory Frameworks for Local Exchange Carriers, D.90-08-06637 CPUC2d 226, 299, Conclusion of Law 2, p. 339; and D.91-07-044, 41 CPUC2d 1, 26 (requiring hearings to support the Commission's "objective judgment on the evidence").

Because at some point the number of CLCs may increase so that the number of information pages in the directory may become cumbersome, the Coalition believes that a two-page limit on such information is feasible and reasonable. While AT&T has gone on the record as requesting four pages in the customer guide section of the directories, it is willing to negotiate for acceptance of one page. MCI argues that if GTEC is using more than a single page for itself in the customer guide section of its directories, then MCI would reserve a right to have more than a single page. MCI also observes that there may be a need for CLCs to provide more information based on how the Commission resolves the dispute over rate-center consistency. If the CLCs are required to disclose in their customer guide pages what calling areas or NXXs are rated as local, MCI states that one page would not provide enough space for a CLC.

Disputes over this issue focus on GTEC's proposal. Pacific has generally been able to reach accommodation with CLCs through negotiation. GTEC currently publishes approximately 100 directories within California, and proposes to allow each CLC to purchase one full page in each directory on which to discuss the CLC's products and services. GTEC offers to list at no charge the CLC's business office, billing inquiry, and repair numbers. In the table of contents of its directory, GTEC offers to provide, at no charge, each CLC's logo and page number reference where these customer-contact numbers can be found. While GTEC offers these terms on a voluntary basis, GTEC objects to being required to provide CLCs more than one free page for informational listings or to reduce its proposed rate for additional pages.

GTEC claims a First Amendment right to control the form and content of the information pages of its directories, which it has never held open to outside parties. (See, Pac. Gas & Elec. Co. v. Public Util. Comm'n, 475 U.S. 1, 8-9 (1986) (PG&E) (utility has First Amendment right in contents of billing envelopes); Central

Ill. Light Co. v. Citizens Util. Bd., 827 F.2D 1169, 1174 (7th Cir. 1987) (same). GTEC argues that Supreme Court precedent holds that under the First Amendment, the Commission may not compel GTEC to allow CLCs more space in the information pages than GTEC is willing to provide on a voluntary basis. (See, PG&E 475 U.S. at 11-12; Central Ill. Light, 827 F.2d at 1174.) To do so, according to GTEC, would impermissibly force it "to alter [its] speech to conform with an agenda [it has] not set." (PG&E, 475 U.S. at 9.) Even if the Commission had a compelling interest in making a variety of views available to customers (a point GTEC does not concede), GTEC argues this interest cannot justify forcing GTEC to incorporate third-party promotional material with which it disagrees into the information pages of its directories.

GTEC further argues that a Commission order requiring it to include competitor marketing information in its directories will decrease the directory's value to GTEC and cause GTEC to lose brand identity and consumer good will. (See, Basicomputer Corp. v. Scott, 937 F.2d 507, 512 (6th Circ. 1992.)

2. **Charges for CLC Inclusion in LEC Directories**

The Coalition believes that CLCs should be treated in a nondiscriminatory fashion vis-a-vis the LECs for any charges for CLC informational listings in LEC directories pursuant to Public Utilities (PU) Code §§ 453 and 532. Thus, if Pacific pays itself or its affiliate, Pacific Bell Directory, for inclusion of this information, CLCs should also pay for such inclusion. However, if Pacific does not pay itself or Pacific Bell Directory for this service, the Coalition believes CLCs should be treated no differently.

Pacific proposed to recover the actual costs for inclusion of CLC information in its directories. Pacific set no limit as to the number of pages that the CLC can request, but required full compensation for the costs associated with these pages. Pacific believes the existing tariff, which allows

interexchange carriers to put information in Pacific's directories as approved in D.94-09-065 ("IRD"), should apply to CLC information. Pacific objects to CLCs paying what Pacific pays for its own directory information listing.

GTEC submits that its current rate for a yellow-page advertisement is the most reasonable surrogate and most fairly represents the value to a CLC in having its products and services advertised in GTEC's directory. In order to ensure equal treatment of all CLCs, GTEC proposes to charge a standard price for all such pages.

GTEC proposes to discount the price of a one-page advertisement 35% off the price that it charges for a comparable yellow-page advertisement. This is the largest discount that GTE offers its own customers that purchase a full-page ad in the yellow pages. GTEC's rate would apply to any pages in excess of the free table-of-contents listing in which GTEC proposes to include each CLC. As mentioned above, the free table-of-contents page will at least display the CLC's name and a reasonably dimensioned logo. GTEC would also list the CLC's "Products and Services" page in the directory's table of contents so that consumers can locate these CLC-information pages easily. GTEC claims that the proposal to include CLC-products-and-service pages will likely cause GTEC to incur additional costs for increased formatting procedures, such as page breaks and filler pages that will not be accounted for.

Several CLCs objected to GTEC's proposed 35% discount for CLC inclusion in GTEC directories as discussed at the April 16, 1996, workshop. CCTA/Time Warner object on the grounds that a rate equal to 65% of the yellow-page advertising rate was not based upon GTEC's cost, but upon GTEC's current market rates to retail advertisers. CCTA/Time Warner contend that CLCs should be charged no more than the cost which the LECs themselves incur to be included in their own directories. CCTA/Time Warner believe the one-page limitation may be acceptable to smaller CLCs.

ORA states no evidence has been offered or appropriately tested in evidentiary hearings regarding the rate to be charged for directory information listings. Consequently, ORA is unable to make a recommendation on this issue at this point. ORA can only suggest that any rates to be charged for directory information listings of CLCs by LECs be set at total-service long-run incremental cost (TSLRIC) in the OANAD proceeding.

E. Independent Third-Party Vendors' Access to LEC/CLC Subscriber Information for Directory Publishing

ADP, representing the interests of independent directory publishers, claims that independent publishers are being unfairly denied access to certain directory-listing information by Pacific. ADP argues that Pacific has an unfair competitive advantage in providing published customer directories, compared with independent directory publishers. For example, the incumbent LEC is able to provide directories to its subscribers immediately upon institution of telephone service. ADP identifies two categories of directory-listing information to which Pacific has denied access: (1) addresses of new nonpublished LEC customers and (2) timely updates of published Pacific white-page-directory listings.

1. Access to Nonpublished Addresses

ADP states that no independent directory publisher can deliver its directory to a new telephone customer who is nonpublished[4] because the LECs have denied independent directory publishers access to street-address information of nonpublished customers. ADP asserts that this is a serious competitive

4 As used in this discussion, "nonpublished" includes unlisted customers. In addition to being unlisted in any telephone directory, nonpublished service also means that the customer's name, address, and phone number are excluded from the directory-assistance records available to the general public by dialing 411.

disadvantage, particularly in light of the fact that nonpublished customers constitute 40% of all telephone subscribers.

ADP recognizes that the names and telephone numbers of nonpublished subscribers must remain private and cannot be disclosed to third-party vendors. In the interest of competitive fairness, however, ADP contends that the LECs should be required to provide the addresses, but not the names or telephone numbers, of nonpublished telephone subscribers for delivery purposes only. ADP acknowledges that addresses are needed only for those nonpublished subscribers that move and change their addresses. Presently, Pacific provides this address information to a third-party delivery contractor, Product Development Corporation (PDC) for delivery of Pacific's directory. (See e.g.; D.91-01-016 at 42.) ADP argues that independent directory publishers should be treated no differently than Pacific treats itself while protecting customer privacy rights. Thus, that same subscriber-address information given to PDC should be provided to other third-party delivery contractors for directory delivery on behalf of independent directory publishers, according to ADP.

As ADP notes, the United States Supreme Court observed in Feist v. Rural Tel. Serv., 499 U.S. 340, 342-343 (1991), that LECs, as the sole providers of telephone service in their area, "obtain subscriber information quite easily" and subscriber-list information is the essence of the "business" of the LEC--that information must be obtained and maintained in order to provide telephone service. In contrast, the Court found that since competing directory publishers are not telephone companies, they are without monopoly status and "therefore lack independent access to any subscriber information." Id. at 343.

ADP believes that § 222(e) of the Telecommunications Act (the Act) further supports its claim for access to nonpublished addresses. §222(e) provides that:

> "a telecommunications carrier that provides telephone exchange service shall provide